

1 Jeffrey L. Hartman, Esq., #001607
2 **HARTMAN & HARTMAN**
3 510 West Plumb Lane, Suite B
4 Reno, Nevada 89509
5 Telephone: (775) 324-2800
6 Facsimile: (775) 324-1818
7 E-mail: notices@bankruptcyreno.com

E-Filed 7/5/2011

8 Attorney for Trustee

9 UNITED STATES BANKRUPTCY COURT
10 DISTRICT OF NEVADA

11 In Re:

12 WES CONSTRUCTION COMPANY,
13 INC., a Nevada corporation,

Case No. BK-N-09-52177-GWZ (Lead)

Case No. BK-N-09-52178-GWZ

Case No. BK-N-09-52181-GWZ

14 HEAVY EQUIPMENT SERVICES, LLC, a
15 Nevada limited liability company,

(Jointly Administered)

16 TRUCKING SERVICES, LLC,
17 a Nevada limited liability company,

18 Debtors.

19 _____/
20 KEITH TIERNEY, Chapter 7 Trustee for
21 WES CONSTRUCTION COMPANY, INC., a
22 Nevada corporation,

Adv. No. _____

23 Plaintiff,

**COMPLAINT FOR RECOVERY OF
PREFERENTIAL TRANSFERS**

24 v.

25 MB FINANCIAL BANK, N.A., a
26 National Association,

27 Defendant.

28 Keith Tierney, Chapter 7 Trustee for WES Construction Company, Inc., a Nevada
corporation ("WES") complains against MB Financial Bank, N.A. ("MB Financial"), a National
Association as follows:

///

///

GENERAL ALLEGATIONS

1. The above-captioned debtors filed petitions commencing cases under chapter 11 of the Bankruptcy Code on July 6, 2009 (the "Petition Date"). The debtors continue to operate their businesses as debtors-in-possession.

2. WES Construction Company, Inc. is a Nevada corporation.

3. Plaintiff is informed and believes and thereon alleges that Defendant, MB Financial Bank, N.A. is a financial institution doing business in the State of Nevada ("MB Financial").

4. Plaintiff Keith Tierney was appointed as Chapter 7 Trustee on December 12, 2009.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §157 and §1334, and pursuant to 11 U.S.C. § 502 and 547. Plaintiff believes and avers that the claims for relief are "core" proceedings subject to determination by this Court pursuant to 28 U.S.C. §157(b)(2)(B), (C), (E), and (F) or otherwise related matters pursuant to 28 U.S.C. §1334. In the event any claim for relief is determined not to be a "core" proceeding, Plaintiff hereby consents to its determination of such claim by this Court.

6. Venue is proper pursuant to 28 U.S.C. §1449.

FIRST CLAIM FOR RELIEF

(Preferential Transfers to MB Financial)

7. Plaintiff hereby incorporates each and every averment set forth in paragraphs 1 through 6 above as if fully set forth herein.

8. That on or about May 14, 2009, WES conducted an auction of certain equipment more particularly identified in Exhibit "A" attached hereto and incorporated by reference herein (hereinafter the "Sold Equipment"). MB Financial was not identified as a lien holder on any of the titles for the Sold Equipment, and did not have a security interest in the Sold Equipment.

9. At the time of the auction, and thereafter (as more specifically set forth below), MB Financial had instituted strict financial controls on the Debtor, and required the deposit of all income received from any source into an MB Financial account, with disbursements to be made only upon approval of MB Financial. On or about June 7, 2009, all of the proceeds from the sale of the Sold

1 Equipment were paid to MB Financial (hereinafter referred to as the "Transfer").

2 10. At the time of the Transfer, MB Financial was owed a substantial unsecured debt by
3 the Debtor, which had been in existence for more than one year.

4 11. At the time of the Transfer, the Debtor was insolvent.

5 12. The Transfer was made within 90 days prior to the Petition Date.

6 13. The Transfer enabled defendant MB Financial to receive more than it would have
7 received if the case were a case under chapter 7 of the Bankruptcy Code, the Transfer had not been
8 made, and defendant MB Financial received payment of such debt to the extent provided for by the
9 Bankruptcy Code.

10 14. The Transfer is an avoidable preferential transfer in accordance with Title 11 U.S.C.
11 §547(b).

12 **SECOND CLAIM FOR RELIEF**

13 15. Plaintiff incorporates by reference each and every allegation in the paragraphs 1
14 through 14 as though fully set forth herein.

15 16. Plaintiff alleges that under 11 U.S.C. § 550(a), to the extent that all or a portion of
16 the transfer to Defendant is avoided under 11 U.S.C. § 547, he is entitled to judgment against
17 Defendant in the amount of the transfer avoided.

18 WHEREFORE, Plaintiff prays for relief as hereinafter set forth:

19 1. With respect to the Claim for Relief, for recovery of all preferential transfers made
20 to MB Financial, together with the interest thereon, from and after the date of such transfers;

21 2. For such and further relief as the court shall deem just and proper.

22 DATED this 5th day of July, 2011.

23 **HARTMAN & HARTMAN**

24 /s/ Jeffrey L. Hartman
25 Jeffrey L. Hartman, Esq.
26 Attorney for Debtors
27
28

EXHIBIT A

WES CONSTRUCTION CO., INC. RBA Auction 05/14/09 - Final													
Plat	Type	Sub Type	Imp'd \$	MS Banker Unsecured	Title Copy	RBA Lot #	Actual Proceeds \$1000 Auction	Under 12500 Surcharge	RBA Commission @ 11%	RBA, Date or Regist	Transport	Net Proceeds	Final Asset Owner
40 - Tractor - Diesel	Tractor	Tractor	4065	Unsecured	Yes	702	6,000	0	660	25	250	5,065	WES
40 - Tractor - Diesel	Tractor	Tractor	4076	Unsecured	Yes	662	2,250	225	248	41	250	1,467	WES
40 - Tractor - Diesel	Tractor	Tractor	4079	Unsecured	Yes	667	6,000	0	550	41	250	4,159	WES
40 - Tractor - Diesel	Tractor	Tractor	4084	Unsecured	Yes	619	3,000	0	300	41	250	2,379	WES
40 - Tractor - Diesel	Tractor	Tractor	4085	Unsecured	Yes	620	3,000	0	300	281	250	2,139	WES
40 - Tractor - Diesel	Tractor	Tractor	4090	Unsecured	Yes	618	3,500	0	365	41	250	2,624	WES
40 - Tractor - Diesel	Tractor	Tractor	4093	Unsecured	Yes	373A	4,500	0	485	41	250	3,714	WES
50 - Tractor - Diesel	Tractor	Tractor	5098	Unsecured	Yes	368	20,000	0	2,200	78	500	17,300	WES
50 - Tractor - Diesel	Tractor	Tractor	6073	Unsecured	Yes	1599	20,500	0	2,255	78	500	17,995	WES
50 - Tractor - Diesel	Tractor	Tractor	6074	Unsecured	Yes	1603	5,500	0	605	78	100	4,795	WES
50 - Tractor - Diesel	Tractor	Tractor	6075	Unsecured	Yes	1602	20,500	0	2,255	78	250	17,995	WES
50 - Tractor - Diesel	Tractor	Tractor	6076	Unsecured	Yes	1606	20,500	0	2,255	78	250	17,995	WES
50 - Tractor - Diesel	Tractor	Tractor	6077	Unsecured	Yes	1602	5,500	0	605	78	100	4,795	WES
50 - Tractor - Diesel	Tractor	Tractor	6078	Unsecured	Yes	1594	20,500	0	2,255	78	250	17,995	WES
50 - Tractor - Diesel	Tractor	Tractor	6079	Unsecured	Yes	1594	3,500	0	365	78	250	2,665	WES
50 - Tractor - Diesel	Tractor	Tractor	6080	Unsecured	Yes	495	0	0	0	78	200	7,000	WES
50 - Tractor - Diesel	Tractor	Tractor	6081	Unsecured	Yes	1599	9,500	0	1,045	78	200	8,455	WES
50 - Tractor - Diesel	Tractor	Tractor	6082	Unsecured	Yes	495	0	0	0	78	500	15,411	WES
50 - Tractor - Diesel	Tractor	Tractor	6083	Unsecured	Yes	1599	10,000	0	1,100	78	200	8,700	WES
50 - Tractor - Diesel	Tractor	Tractor	6084	Unsecured	Yes	1595	6,000	0	650	78	200	5,350	WES
50 - Tractor - Diesel	Tractor	Tractor	6085	Unsecured	Yes	701	5,500	0	605	41	250	4,894	WES
50 - Tractor - Diesel	Tractor	Tractor	6086	Unsecured	Yes	617	3,500	0	365	41	250	2,624	WES
50 - Tractor - Diesel	Tractor	Tractor	6087	Unsecured	Yes	714	3,000	0	300	161	250	2,250	WES
50 - Tractor - Diesel	Tractor	Tractor	6088	Unsecured	Yes	590	5,500	0	605	41	250	4,894	WES
50 - Tractor - Diesel	Tractor	Tractor	6089	Unsecured	Yes	597	5,500	0	605	41	250	4,894	WES
50 - Tractor - Diesel	Tractor	Tractor	6090	Unsecured	Yes	578	7,000	0	770	41	250	6,230	WES
50 - Tractor - Diesel	Tractor	Tractor	6091	Unsecured	Yes	708	3,500	0	365	365	250	2,479	WES
50 - Tractor - Diesel	Tractor	Tractor	6092	Unsecured	Yes	604	6,000	0	650	41	250	5,049	WES
50 - Tractor - Diesel	Tractor	Tractor	6093	Unsecured	Yes	498	55,000	0	6,050	78	200	48,750	WES
50 - Tractor - Diesel	Tractor	Tractor	6094	Unsecured	Yes	495	6,000	0	7,000	41	500	55,419	WES
50 - Tractor - Diesel	Tractor	Tractor	6095	Unsecured	Yes	511	9,500	0	1,045	78	250	8,205	WES
50 - Tractor - Diesel	Tractor	Tractor	6096	Unsecured	Yes	336	20,000	0	2,300	41	500	17,259	WES
50 - Tractor - Diesel	Tractor	Tractor	6097	Unsecured	Yes	477	23,000	0	2,530	1,535	700	18,235	WES
50 - Tractor - Diesel	Tractor	Tractor	6098	Unsecured	Yes	1591	20,500	0	2,255	78	250	17,995	WES
50 - Tractor - Diesel	Tractor	Tractor	6099	Unsecured	Yes	1592	20,500	0	2,255	78	250	17,995	WES
50 - Tractor - Diesel	Tractor	Tractor	6100	Unsecured	Yes		421,250	225	46,338	2,969	9,000	362,719	WES

EXHIBIT "A"